UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 24 2005

EXHIBIT 1

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Ms. Evelyn Rodriguez Cintron
Air Quality Area
Commonwealth of Puerto Rico
Office of the Governor
Environmental Quality Board
National Plaza Building
431 Ponce De Leon Avenue
Hato Rey, Puerto Rico 00917

AREA CALIDAD DE AIRE
2005 MAR 29 AM 8:19

Dear Ms. Cintron:

This letter is in response to your February 3, 2005, letter to Sally Shaver, Director of the Emission Standards Division, United States Environmental Protection Agency (EPA). I am providing this response because the Compliance Assessment and Media Programs Division (CAMPD) has the delegated responsibility for issuing applicability determinations for Clean Air Act stationary source regulations. In your letter, you specifically request a determination as to the applicable opacity limit in the Portland Cement National Emission Standard for Hazardous Air Pollutants (NESHAP), 40 CFR Part 63, Subpart LLL, for the clinker cooler at the Essroc San Juan portland cement facility. In a February 10, 2005, letter to EPA, Essroc's legal counsel has requested this same determination which I have responded to separately. Enclosed.

The Essroc San Juan facility is configured such that the majority of the clinker cooler emissions are routed through the in-line kiln/raw mill. However, as stated by Essroc's legal counsel in the February 10, 2005, letter to EPA, an average of 20 percent of the clinker cooler emissions do not pass through the in-line kiln/raw mill. These clinker cooler emissions are mixed with other process gases and are commingled with the kiln emissions in a common duct just prior to being discharged through the baghouses and to the atmosphere.

In an April 6, 1995, memorandum from John Rasnic, Director, Manufacturing, Energy and Transportation Division to EPA Regional Air Division Directors, EPA recognized that portland cement facilities were often configured to route emissions from one affected facility through another affected facility for process purposes. The Agency stated that this routing of emissions was not considered circumvention if it was being done as part of the manufacturing process for reasons such as energy conservation. The 1995 memorandum clarified that when gases originate in one affected facility and then pass through a second affected facility as part of the manufacturing process, EPA applies the opacity limit from the affected facility from which the gases are discharged directly into the atmosphere.

line kiln/raw mill emissions in a common duct or stack just prior to discharge and, consistent with the April 6, 1995, memorandum, are subject to the more stringent 10 percent clinker cooler opacity limit. Furthermore, the fact that the gases being discharged through the baghouses to the atmosphere are not exclusively clinker cooler gases does not exempt those gases from the applicable opacity limit of 10 percent.

Lastly, the applicable opacity limit is not affected by the fact that the majority of the clinker cooler gases are routed through the in-line kiln raw mill, and that only an average of 20 percent of the clinker cooler gases are commingled in the common duct with in-line kiln/raw mill emissions prior to discharge. In response to a question from EPA Region 2 regarding this same San Juan portland cement facility, EPA issued a May 12, 1995, memorandum (John Rasnic, Director, Manufacturing, Energy and Transportation Division to Jehuda Menczel, EPA Region 2 Air Compliance Branch) which stated:

> [u]nless a regulation specifically provides a deminimis level, the EPA believes that there is no deminimis level for gases released to the atmosphere from an affected facility. If an owner or operator of an affected facility directly discharges to the atmosphere any percentage of an affected facility's emissions through a stack, the emissions from that stack must meet all of the applicable requirements that apply to the affected facility from which the emissions originated.

This determination has been coordinated with EPA's Office of Air Quality Planning and Standards and the Office of Civil Enforcement. If you have any questions regarding this matter, please contact Scott Throwe of my staff at (202) 564-7013.

Very truly yours,

M. S. Alushin

Michael S. Alushin, Director
Compliance Assessment and Media Programs Division
Office of Compliance

Enclosure

cc: Hector Velez, EPA Region 2, Caribbean Environmental Protection Division
Francisco Claudio, EPA Region 2, Caribbean Environmental Protection Division
Flaire Mills, EPA Region 2
Ken Eng, EPA Region 2
Sally Shaver, OAQPS (C504-03)
Keith Barnett, OAQPS (C504-05)

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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mr. Francis Torres
Torres and Garcia P.S.C.
P.O. Box 19539
San Juan, Puerto Rico 00910-1539

Dear Mr. Torres:

This letter is in response to your February 10, 2005, letter to Sally Shaver, Director of the Emission Standards Division, United States Environmental Protection Agency (EPA). I am providing this response because the Compliance Assessment and Media Programs Division (CAMPD) has the delegated responsibility for issuing applicability determinations for Clean Air Act stationary source regulations. In your letter, you specifically request a determination as to the applicable opacity limit in the Portland Cement National Emission Standard for Hazardous Air Pollutants (NESHAP), 40 CFR Part 63, Subpart LLL, for the clinker cooler at the Essroc San Juan portland cement facility.

We believe you are misinterpreting some of EPA's previous determinations regarding commingled emission streams and emission streams routed from one affected facility through another affected facility. We hope this letter will serve to clarify the Agency's position regarding these matters.

The Essroc San Juan facility is configured such that the majority of the clinker cooler emissions are routed through the in-line kiln/raw mill. However, as you state in your February 10, 2005, letter, an average of 20 percent of the clinker cooler emissions do not pass through the in-line kiln/raw mill. These clinker cooler emissions are mixed with other process gases and are commingled with the in-line kiln/raw mill emissions in a common duct just prior to being discharged through the baghouses and to the atmosphere.

In an April 6, 1995, memorandum from John Rasnic, Director, Manufacturing, Energy and Transportation Division to EPA Regional Air Division Directors, EPA recognized that portland cement facilities were often configured to route emissions from one affected facility through another affected facility for process purposes. The Agency stated that this routing of emissions was not considered circumvention if it was being done as part of the manufacturing process for reasons such as energy conservation. The 1995 memorandum clarified that when gases originate in one affected facility and then pass through a second affected facility as part of the manufacturing process, EPA applies the opacity limit from the affected facility from which the gases are discharged directly into the atmosphere.

The 1995 memorandum further clarified that this routing of emissions is distinct from a situation in which emissions from two affected facilities are simply combined or commingled in a common duct or stack prior to discharge to the atmosphere:

> [w]here emissions from two affected facilities are simply combined or commingled in a common duct or stack it is EPA's policy and practice to apply the more stringent opacity limitation. Application of the more stringent limitation is necessary to assure compliance with each applicable standard. Absent application of the more stringent opacity limitation, the commingling of emissions from the affected facilities before discharge to the atmosphere would be considered circumvention under 40 CFR 60.12, and is inconsistent with the requirement at 60.8(e) to provide means for accurate sampling of applicable emission standards.

The Essroc San Juan facility is subject to the Portland Cement NESHAP. The April 6, 1995, memorandum cited above preceded the promulgation of the Portland Cement NESHAP, and consequently, only references the Portland Cement New Source Performance Standard (40 CFR Part 60, Subpart F). However, the policies stated in the April 6, 1995, memorandum regarding combined emission streams also apply to NESHAP opacity limits. In addition, the Part 63 General Provisions have circumvention language at 40 CFR Section 63.4(b) similar to the language at 40 CFR Section 60.12, that prohibits the concealing of emissions.

The Essroc San Juan facility has both of the configurations described in the April 6, 1995, memorandum. That is, it routes emissions from one affected facility through another affected facility, and it also combines the emissions of two affected facilities in a common duct or stack. The clinker cooler emissions which are routed through the in-line kiln/raw mill are subject to a 20 percent opacity limit because the affected facility from which the clinker cooler emissions are released is the in-line kiln/raw mill which is subject to a 20 percent opacity limit. This is consistent with the Agency's policy that when gases originate in one affected facility, and then pass through a second affected facility as part of the manufacturing process, EPA applies the opacity limit from the affected facility from which the gases are discharged. However, before the in-line kiln/raw mill emissions are released to the atmosphere, they are commingled with clinker cooler gases that do not pass through the in-line kiln/raw mill. Those clinker cooler gases are subject to a 10 percent opacity limit. Because the clinker cooler emissions are commingled in a common duct or stack with in-line kiln/raw mill emissions, the more stringent 10 percent clinker cooler opacity limit applies to the combined emissions that are ultimately released to the atmosphere.

In your letter you indicated that "[t]here is no direct discharge of gases generated exclusively in the clinker cooler." We disagree with this statement. An average of 20 percent of the clinker cooler gases are discharged directly through the baghouses to the atmosphere. These clinker cooler emissions are commingled with the in-line kiln/raw mill emissions in a common

duct or stack just prior to discharge and, consistent with the April 6, 1995, memorandum, are subject to the more stringent 10 percent clinker cooler opacity limit. Furthermore, the fact that the gases being discharged through the baghouses to the atmosphere are not exclusively clinker cooler gases does not exempt those gases from the applicable opacity limit of 10 percent.

Lastly, the applicable opacity limit is not affected by the fact that the majority of the clinker cooler gases are routed through the in-line kiln/raw mill, and that only an average of 20 percent of the clinker cooler gases are commingled in the common duct with in-line kiln/raw mill emissions prior to discharge. In response to a question from EPA Region 2 regarding this same San Juan portland cement facility, EPA issued a May 12, 1995, memorandum (John Rasnic, Director, Manufacturing, Energy and Transportation Division to Jehuda Menczel, EPA Region 2 Air Compliance Branch) which stated:

> [u]nless a regulation specifically provides a deminimis level, the EPA believes that there is no deminimis level for gases released to the atmosphere from an affected facility. If an owner or operator of an affected facility directly discharges to the atmosphere any percentage of an affected facility's emissions through a stack, the emissions from that stack must meet all of the applicable requirements that apply to the affected facility from which the emissions originated.

This determination has been coordinated with EPA's Office of Air Quality Planning and Standards and the Office of Civil Enforcement. If you have any questions regarding this matter, please contact Scott Throwe of my staff at (202) 564-7013.

Very truly yours,

M. S. Alushin

Michael S. Alushin, Director
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